

# BOARD OF ZONING APPEALS

## MINUTES

6:30 PM

June 18, 2014

City Council Chambers

**MEMBERS PRESENT:** Bill Burton, Leanne Cardoso, Jim Shaffer and George Papandreas

**MEMBERS ABSENT:** Bernie Bossio

**STAFF:** Christopher Fletcher, AICP

**I. CALL TO ORDER AND ROLL CALL:** Cardoso called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

**II. MATTERS OF BUSINESS:**

**A. Minutes for the May 21, 2014 Hearing:** Papandreas moved to approve as presented; seconded by Burton. Motion carried 3-1 with Shaffer abstaining due to his absence.

**III. OLD BUSINESS: NONE**

**IV. NEW BUSINESS:**

Cardoso noted that Agenda Items A, B, and C have been withdrawn by the petitioner.

**D. V14-08 / Saul Radman / 419 High Street:** Request by Lisa Mardis of Project Management Services, on behalf of Saul Radman, for variance relief from Article 1349.04(A)(5) as it relates to rear setbacks at 419 High Street; Tax Map 26, Parcel 80; B-4, General Business District.

**E. V14-09 / Saul Radman / 419 High Street:** Request by Lisa Mardis of Project Management Services, on behalf of Saul Radman, for variance relief from Article 1349.03(D) as it relates to maximum lot coverage at 419 High Street; Tax Map 26, Parcel 80; B-4, General Business District.

**F. V14-10 / Saul Radman / 419 High Street:** Request by Lisa Mardis of Project Management Services, on behalf of Saul Radman, for variance relief from Article 1351.01(I) as it relates to minimizing canyon effects created by tall structures at 419 High Street; Tax Map 26, Parcel 80; B-4, General Business District.

**G. V14-11 / Saul Radman / 419 High Street:** Request by Lisa Mardis of Project Management Services, on behalf of Saul Radman, for variance relief from Article 1349.08(C) as it relates to bicycle storage at 419 High Street; Tax Map 26, Parcel 80; B-4, General Business District.

Fletcher read the Combined Staff Report for Case Nos. V14-08 through and including V14-11.

Cardoso recognized the petitioner's representative, Lisa Mardis of Project Management Services, who stated the proposed development would offer a vibrant development that would support a unique sense of place and community that would replace the functionally obsolete and underutilized structure presently located at 419 Spruce Street. The proposed structure would consist of loft type apartments with brick exterior that was suggested by the Design Review Committee. A sidewalk will be constructed that will run the length of the building to ensure pedestrian safety. The proposed development would increase density and diversify the demographic of the downtown area.

Papandreas asked if an elevator would be available that could fit a bicycle. Mardis confirmed.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed.

Fletcher stated a letter in favor of the proposed development was received from Main Street Morgantown and he read the letter aloud.

Papandreas noted that having the garbage area on the inside allows for maximum development of the property and less trash around the building. Cardoso agreed.

Fletcher read the Staff recommendations for Case No. V14-08.

Burton made a motion to find in the affirmative for the all the Findings of Facts for V14-08 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

It appears that all three (3) of the existing buildings that front High Street and share their rear property boundaries with the Morgantown Parking Authority's Lot B (Fayette and Chestnut) have no rear setbacks and cover 100% of their respective parcels. With the exception of solid waste management, this development pattern does not appear to have manifested harm to public interests, the public realm, or the rights of adjoining property owners. The proposed development will significantly improve solid waste management for the subject site by locating garbage storage facilities within the structure; an attribute that is uncommon within the immediate area and across the B-4 District. The requested variance will not restrict emergency access to and from the proposed building or adjacent properties.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The former Daniel's Mens Clothing Store building, which will be razed and removed by the proposed development, currently has no rear setback and covers 100% of the subject property. The development pattern of no rear setback and 100% lot coverage appears to be a prevailing attribute of the subject and adjoining properties.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Observing the rear setback and lot coverage requirements would create a twelve-foot area adjoining the publicly-owned parking lot that would most likely be used unintentionally by the public and become an area attractive to loitering, trespass, litter, etc. Because paving the area will be necessary to access

the internal garbage storage area and secondary access to the building, function and contributing green space development could not be accomplished.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Vacancy rates for commercial retail and service leasable space in the 400 Block of High Street appear to have been very low for many years. Observing the rear setback and lot coverage requirements will reduce the amount of commercial retail and service leasable space that could otherwise be delivered by the proposed development; particularly given the very limited opportunity of constructing new commercial space along High Street. The proposed development appears to be consistent with the land management concepts, principals, patterns, character, objectives and strategies enumerated in the 2013 Comprehensive Plan Update and the vision, development theme, and strategies within the “Downtown Core” area enumerated in the 2010 Downtown Strategic Plan Update.

Papandreas moved to grant a twelve (12) foot variance from the minimum rear setback standard so that the proposed building may be constructed to the rear property boundary as requested without conditions for Case No. V14-08; seconded by Burton. Motion carried unanimously.

Fletcher read the Staff recommendations for Case No. V14-09.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V14-09 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

It appears that all three (3) of the existing buildings that front High Street and share their rear property boundaries with the Morgantown Parking Authority’s Lot B (Fayette and Chestnut) have no rear setbacks and cover 100% of their respective parcels. With the exception of solid waste management, this development pattern does not appear to have manifested harm to public interests, the public realm, or the rights of adjoining property owners. The proposed development will significantly improve solid waste management for the subject site by locating garbage storage facilities within the structure; an attribute that is uncommon within the immediate area and across the B-4 District. The requested variance will not restrict emergency access to and from the proposed building or adjacent properties.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The former Daniel’s Mens Clothing Store building, which will be razed and removed by the proposed development, currently has no rear setback and covers 100% of the subject property. The development pattern of no rear setback and 100% lot coverage appears to be a prevailing attribute of the subject and adjoining properties.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Observing the rear setback and lot coverage requirements would create a twelve-foot area adjoining the publicly-owned parking lot that would most likely be used unintentionally by the public and become an area attractive to loitering, trespass, litter, etc. Because paving the area will be necessary to access the internal garbage storage area and secondary access to the building, function and contributing green space development could not be accomplished.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Vacancy rates for commercial retail and service leasable space in the 400 Block of High Street appear to have been very low for many years. Observing the rear setback and lot coverage requirements will reduce the amount of commercial retail and service leasable space that could otherwise be delivered by the proposed development; particularly given the very limited opportunity of constructing new commercial space along High Street. The proposed development appears to be consistent with the land management concepts, principals, patterns, character, objectives and strategies enumerated in the 2013 Comprehensive Plan Update and the vision, development theme, and strategies within the “Downtown Core” area enumerated in the 2010 Downtown Strategic Plan Update.

Papandreas moved to grant a ten percent (10%) variance from the maximum lot coverage standard as requested without conditions for Case No. V14-09; seconded by Burton. Motion carried unanimously.

Fletcher read the Staff recommendations for Case No. V14-10.

Papandreas made a motion that, based on the Wind Flow Analysis and Sunlight Distribution Report submitted by the petitioner, no additional or further design elements are required to preserve adequate light and airflow to public spaces around the subject site. The motion was seconded by Shaffer and carried unanimously.

Fletcher read the Staff recommendations for Case No. V14-11.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V14-11 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

An alternate means of delivering requisite bicycle storage can be accomplished by the Board’s condition requiring permanently affixed bicycle storage amenities within each of the proposed dwelling units.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

An alternate means of delivering requisite bicycle storage can be accomplished by the petitioner’s willingness to fulfill the Board’s condition requiring permanently affixed bicycle storage amenities within each of the proposed dwelling units.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Vacancy rates for commercial retail and service leasable space in the 400 Block of High Street appear to have been very low for many years. Observing the bicycle storage facility standard will reduce the amount of commercial retail and service leasable space that could otherwise be delivered by the proposed development; particularly given the very limited opportunity of constructing new commercial space along High Street.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The spirit and intent of the zoning ordinance to increase the supply of residential bicycle storage thereby growing necessary infrastructure required to promote alternate modes of transport will be accomplished by the Board's condition requiring permanently affixed bicycle storage amenities within each of the proposed dwelling units.

Shaffer moved to grant variance relief from requisite bicycle storage provisions with the condition that permanently affixed bicycle storage amenities must be developed within each of the dwelling units for Case No. V14-11; seconded by Burton. Motion carried unanimously.

Cardoso reminded Ms. Mardis that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- H. **CU14-07 / Traugh / 344 High Street:** Request by Zachary Traugh, on behalf of The Bank, for conditional use approval of a "Restaurant, Private Club" at 344 High Street; Tax Map 26A, Parcel 109; B-4, General Business District.

Fletcher read the Staff Report.

Cardoso recognized the petitioner, Zachary Traugh of 344 High Street, who stated that he had applied for a conditional use petition in 2010 when the restaurant was *Lira*. Traugh stated he has worked in the downtown area for 10 years and believes the biggest thing that's been missing in the downtown area is the price aspect and awareness of the downtown clientele. He wants to create a nice place for people to come enjoy the food in an elegant atmosphere yet at an affordable price. There will be a shoe shine stand and pool tables.

Papandreas asked if there would be changes to the floor design. Traugh stated there will be no changes in the design to the kitchen.

Cardoso inquired on hours of operation. Traugh explained that brunch would be offered on Sunday but the restaurant would be closed on Monday.

Papandreas asked if they would be open for lunch. Traugh stated they don't plan to be open for lunch at this time as they would need a more aggressive strategy with most people only having 30 minutes available during the lunch hour. He plans to offer lunches by January 2015.

Papandreas asked if the 60/40 food ratio could be met if not opening for lunch. Traugh confirmed and stated the establishment will not be open late and most of their profits will come from food sales as very little money is made from alcoholic beverages in the downtown area due to lower price points.

Shaffer asked if Fat Daddy's meets the 60/40 food ratio. Traugh explained that Fat Daddy's is grandfathered in and does not have to meet that ratio but does sell a good amount of food. Fat Daddy's would not meet the ratio as people don't come to that establishment to eat rather the food is just an available option with the drink specials.

Papandreas inquired about the space around the pool table and the proximity to the tables. Traugh stated a company measured out the spaces and noted three and a half feet is the space needed in-between players. Papandreas expressed concern with the pool tables being too close to the tables. Traugh stated if the area is too tight he would have no problem eliminating a pool table but explained the seating will be limited to around 50 people to allow for a good experience. Too many tables would be hard to manage and provide exceptional service.

Fletcher referred to the Planning and Zoning ordinance which states the seating capacity of any establishment shall reach 50 persons and bar seating is excluded from that number. Fletcher stated he does not see 50 available seats in the floor plan provided.

Cardoso noted the number of bar seating, pool tables and couches, but does not see many tables that would be provided for people to have a sit down meal.

Traugh explained the floor plan and noted the tables are higher than the average table. If necessary, he would eliminate pool tables and provide more seating.

Shaffer stated he is not comfortable with Traugh's experience which is prominently in bars and asked for specific restaurant experience. Traugh explained that he has worked in restaurants since he was young, but his main experience currently is in bars. He referred to John Mann, who will be the chef for *The Bank* and stated he has many years of restaurant experience.

Cardoso recognized John Mann of 344 High Street, who stated he completed his studies with the Culinary Institute of America and then worked with the Hyatt and has been in the industry ever since including employment with Richwood Grill and Dragonfly. He is currently the executive chef for Tazikhi's Restaurant.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request.

Cardoso recognized Brandon Kupec of 209 Green Street, who stated he is currently a half owner of the building at 344 High Street. Kupec explained there is an additional space in the basement area that includes a prep kitchen with a freezer and refrigerator. He noted that Traugh has been instrumental in the business and has an excellent market plan. The two previous restaurants that occupied the building met the 60/40 food ratio and the manager of those establishments had no prior experience. Therefore he feels it's tough to judge someone on their previous restaurant experience.

There being no further public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas asked Fletcher if the two prior restaurants that were established in the same building met the food ratio. Fletcher stated he had no documentation or knowledge of the prior restaurants.

Papandreas asked if the hours could be tweaked if moving forward with the conditional use request. Fletcher stated the Board could adjust the day and hours of operations if desired but cautioned for consistency with conditions included in previous "Restaurant, Private Club" uses in the B-4 District.

Shaffer stated he was not comfortable with the level of Traugh's experience but feels it's a great idea and Mr. Mann would bring a lot to the establishment.

Papandreas stated he knew the owner of Dragonfly and is familiar with Traugh's management ability and feels he has the capability to operate in management capacity.

Cardoso referred to the ordinance and noted that the one year requirement could be waived if the applicant can demonstrate very clearly that the establishment can meet the criteria.

Cardoso noted she is not as concerned with the experience but feels like the floor plan does not coincide with the vision the petitioner has described. She would like to see more dining tables and quiet areas in the floor plan.

Papandreas feels there is a need for a place that an older crowd can visit and the plan and prices are good. The pool tables don't seem to fit and he would like to see more dining seating.

Fletcher noted there are many concerns expressed by the Board relate to the proposed layout of the establishment as it appears to resemble more of a bar than a restaurant. Fletcher suggested that the Board table the conditional use petitioner and schedule a site visit with the Board members and the petitioner.

Papandreas agreed that there are concerns with the layout but would rather work out the issues than table the request.

Cardoso recognized Zachary Traugh and explained the option of tabling the request or working through the concerns expressed by the Board members.

Traugh stated he is willing to work with the Board and is flexible. He is willing to eliminate two pool tables and add more tables and booths. Traugh expressed he would like to keep the couches as he wants to encourage movement throughout the restaurant as people visit.

Cardoso asked Traugh if he was opposed to tabling the request and doing a site visit. Traugh explained he would like to avoid tabling the request as he would like to be open by August when the students return.

Cardoso suggested a site visit to feel more comfortable with the petition. Papandreas agreed and noted the petitioner is still able to get the establishment ready for opening as the fixed elements of the floor plan are going to remain the same as the prior restaurant.

Fletcher explained the petition is only for the sale of liquor. The petitioner may proceed in opening the restaurant with a beer and/or wine license.

Burton moved to table CU14-07 to the July 16, 2014 hearing for the purpose of scheduling an site vist; seconded by Papandreas. Motion carried unanimously.

Cardoso explained to Mr. Traugh that a site visit will be scheduled and he will be notified by Staff of the date and time of the visit.

- I. **V14-25 / Kuehn / 320 High Street:** Request by John P. Kuehn, on behalf of Kuehn Sisters Diamonds, for variance relief from Article 1369 as it relates to signage at 320 High Street; Tax Map 26A, Parcel 120; B-4, General Business District.

Fletcher read the Staff report.

Cardoso recognized the petitioner, John Kuehn of 320 High Street, who explained a variance is necessary to include the logo of the sign and to make the store more attractive.

Burton asked if the canopy would be coming off when the new sign is erected. Kuehn confirmed.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandrea made a motion to find in the affirmative for the positive Findings of Facts versions for V14-25 as revised by Staff; seconded by Burton. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

There are at least two other projecting signs on High Street and both are larger than 3' X 3' (*D.P. Dough* and the *Sew In*). The small increase in size does not appear to be a significant variation from the requirement. Other suspended signs that exceed the maximum area standard along High Street do not appear to manifest harm to public interests, the public realm, or the rights of adjoining property owners.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The special condition appears to result from the nature of the vertical elements and right angles of the petitioner's logo design. There appears to be a number of suspended sign design, shape, and size variations along High Street, which appears to positively contribute to prevailing related characteristics.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The logo is square so it does not appear to fit an oval. A 2' X 3' sign dimension will not permit a square larger than 2 feet. A two-foot by two-foot sign may not be visible to the motoring or pedestrian passersby.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The additional three (3) square feet of suspended sign does not appear to be noticeably different than most other signs on High Street.



Papandreas moved to approve V14-25 by granting a three (3) square foot variance from the maximum suspended sign area standard and to permit commercial copy messaging in addition to the logo with the following conditions:

1. That the suspended sign for which variance is granted herein may not be separately illuminated.
2. That the suspended sign for which variance relief is granted herein must be made of wood; sculpted "sign foam"; ornamental metals such as bronze, brass, copper, etc.; painted aluminum panels; and/or, stone or masonry.

The motion was seconded by Burton and carried unanimously.

Cardoso reminded Mr. Kuehn that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- J. V14-26 / White / 1340 Fairfield Street:** Request by Harold White for variance relief from Article 1331.08 as it relates to setbacks for accessory structures at 1340 Fairfield Street; Tax Map 2, Parcel 67; R-1, Single-Family Residential District.

Fletcher read the Staff report.

Cardoso recognized the petitioner, Vickie White of 1340 Fairfield Street, who concurred with the Staff Report and feels the gazebo would improve the property.

Papandreas asked if the property is fenced in. White confirmed.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the positive Findings of Facts versions for V14-26 as revised by Staff; seconded by Burton. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed location of the gazebo is at the northeast corner of the petitioner's property. The only nearby structure is a detached garage. The proposed location of the gazebo adjoins the far rear yard corners of neighboring properties. The variance of one (1) foot should not manifest harm to public interests, the public realm, or the rights of adjoining property owners.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The petitioner purports that existing decking in the side and rear yard hinder the placement of the proposed gazebo to conform to minimum setback requirements for accessory structures.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The petitioner purports that existing decking in the side and rear yard hinder the placement of the proposed gazebo to conform to minimum setback requirements for accessory structures. The one-foot variance appears to be reasonable given conditions of the surrounding built environment in terms of proximity of neighboring principal and accessory structures and the utilization characteristics of adjoining rear yards as outdoor open space.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed location of the gazebo is furthest from neighboring principal structures. Granting a one-foot variance in this case should not undermine the intent of protecting property values; preserving the comfort, convenience, and enjoyment of adjoining properties; and mitigating potential encroachment of nuisances or hazards.

Papandreas moved to grant a one (1) foot variance from the rear and side setback standards for accessory structures without conditions for Case No. V14-26 as requested; seconded by Shaffer. Motion carried unanimously.

Cardoso reminded Ms. White that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- K. V14-27 / Smitty's Kountry Kreme / 1137 Van Voorhis Road:** Request by William Smith, on behalf of Smitty's Kountry Kreme, LLC, for variance relief from Article 1369 as it relates to signage at 1137 Van Voorhis Road; Tax Map 6, Parcel 43; B-1, Neighborhood Business District.

Fletcher read the Staff Report.

Cardoso recognized the petitioner, William Smith of 1137 Van Voorhis Road, who stated the existing sign was nonconforming and has existed for over 20 years. The request is to take the ice cream off the top and reduce to a square which would measure around 12 feet. A changeable copy is not important and he is only asking for his name and logo on the sign. The sign is already wired to his building from the previous business.

Papandreas asked if the ice cream design would be included within the sign. Smith confirmed.

Fletcher referred to the Staff Report to explain the look of the proposed sign.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandrea made a motion to find in the affirmative for the positive Findings of Facts versions for Case No. V14-27 as revised by Staff; seconded by Burton. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The former TCBY sign structure appears to have been in place for over 20 years and does not appear to have manifested harm to the public good or rights of property owners within the immediate area.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The special condition is the fact that the former TCBY sign structure has been in place for over 20 years. The petitioner simply seeks to remove a portion of the sign thereby reducing the extent of requisite variance relief and utilize the existing sign structure.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The age of the plaza and existing signs in the area reflect installation that took place before the present codes were put into place. Most businesses have existed 15 plus years. The former TCBY sign structure appears to have successfully messaged the location of a former ice cream / frozen yogurt establishment similar to the petitioner's establishment. The petitioner has revised plans for the sign to reduce the extent of its nonconformity in an attempt to preserve the unique and long-standing sign structure.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The zoning classification for the subject site is B-1, Neighborhood Business District. The zoning classification for the majority of the Van Voorhis Road and Chestnut Ridge Road commercial corridor and flanking the petitioner's site is B-2, Service Business District where internally illuminated and polycarbonate faced signs are permitted; where a number of ground signs exist that exceed design and performance standards; and, where variance relief has been granted for the height and area of ground signs.

Papandreas moved to grant the following variance relief:

- To exceed the maximum area standard by 12 square feet.
- To exceed the maximum height standard by 10 feet.
- To permit the use of a transparent polycarbonate sign face.
- To permit internal illumination.

The motion included the conditions that the proposed changeable copy sign may not be developed and that copy on the sign for which variance relief is granted must be restricted to the name and logo of the Smitty's Kountry Kreme establishment as required under Article 1369.08(C) in the B-1 District.

The motion was seconded by Shaffer and carried unanimously.

Cardoso reminded Mr. Smith that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- L. **V14-28 / Mon County Habitat for Humanity / Jerome Park:** Request by Evan Zuverink, on behalf of Mon County Habitat for Humanity, for variance relief as it relates to side setbacks along Jerome Street; Tax Map 24, Parcel 41; R-1A, Single-Family Residential District.

Fletcher read the Staff Report.

Cardoso recognized the petitioner, Evan Zuverink of 3511 University Avenue, who stated he concurred with the Staff report.

There being no comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Papandrea made a motion to find in the affirmative for all of the Findings of Facts for V14-28 as revised by Staff; seconded by Burton. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

There are several other single-family dwellings in the vicinity that do not meet the minimum side setback requirements in this community. Examples would include 1289 Carlisle Avenue, 1261 Carlisle Avenue, and 1265 Carlisle Avenue, all of which are located across Jersey Avenue from the development. This variance would have no adverse effect on any other property in this community. Similar variance relief was granted by the Board under Case No. V14-17 on 30 APR 2014 for the petitioner's lots 1 and 2 that is a part of the same development along Jersey Street. Additionally, affordable housing has no negative impact on market values or land use in this community.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

This variance is a result of the lot configuration and angular layout.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This variance aids in mitigating site design given the angular layout of the parcels in relation to Jersey Street, a desire for the single-family dwelling structures to be at or near parallel with Jersey Street, and allows for the creation of 4 additional units of affordable housing in the community.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

This variance request will only effect the side setback requirement between the houses that Habitat for Humanity is developing on Jersey Avenue. All other setback requirements, rights-of-ways, and city requirements will remain in effect and be observed. This variance appears prudent to Habitat for Humanity's continued development of affordable housing in the City of Morgantown.

Papandreas moved to grant a two-foot side setback variance for each of lots 3, 4, 5, and 6 as a part of the petitioner's single-family development along Jersey Avenue; seconded by Burton. Motion carried unanimously.

Cardoso reminded Mr. Zuverink that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- M. BA14-02 / Bruno Mandarano / 318 Raymond Street:** Request by Bruno Mandarano for an Administrative Appeal under Article 1383 of an administrative determination by the Planning Division concerning the renovation of a nonconforming structure located at 318 Raymond Street; Tax Map 20, Parcel 300; R-1A, Single-Family Residential District.

Fletcher read the Staff report.

Cardoso recognized the petitioner, Bruno Mandarano of New Jersey, who explained the structure is a very large two-bedroom, one-bath unit that has lost its favor with tenants. The adjoining duplex is a three-bedroom, one-bath unit that has significant flavor and does well. Mandarano's request is to renovate the two-bedroom, one-bath unit into a three-bedroom, two-bath unit. There is significant parking to fulfill the need to the proposed request.

Burton asked if he is legally allowed to have three people in the property now. Fletcher confirmed because the units were registered with the City prior to September 1, 2010 when the "no more than two-unrelated occupant" requirement was enacted. Burton noted that he is allowed to have three people in the two-bedroom as it currently is right now, and the request is to now give each of those three people their own bedroom. Fletcher could not confirm with the existing two-bedroom unit could be occupied by three-unrelated residents under the City's Building Code.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Cardoso declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations.

Cardoso expressed that decisions made by Staff were correct. Papandreas agreed and noted that Staff went above and beyond to meet the spirit and intent of the project.

Burton felt the Code could be interpreted a number of ways and the structure could be altered without increasing the density.

Papandreas feels the decision should be upheld and agreed the Code could be interpreted a number of way. He noted the intent of the R-1A District is to transition back into single-family neighborhoods.

Cardoso asked if the Board is permitted to change the decision that was made by Staff. Fletcher confirmed.

Papandreas expressed that he doesn't see this as the City trying to control people in how to use their land, rather trying to preserve the value of everyone's property surrounding the subject site.

Papandreas made a motion to uphold the Planning Division's administrative determination in this case denying the related building permit application based on the findings and conclusions presented in the Staff Report; seconded by Shaffer. Motion carried unanimously.

Cardoso explained to the petitioner that the Board denied the administrative appeal and that this decision could be appealed to Circuit Court within thirty days of receiving written notification by the Planning Division.

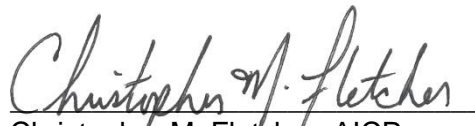
**V. ANNOUNCEMENTS:** None.

**VI. ADJOURNMENT:** 9:00 PM

MINUTES APPROVED:

July 16, 2014

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP